

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SPENCER L. MILLER,

Petitioner,

V.

BRUNO STOLE.

Respondent.

Case No. C09-5083BHS/JKA

REPORT AND RECOMMENDATION TO DENY *IN FORMA PAUPERIS* STATUS

NOTED FOR:
April 17, 2009

This habeas corpus action, filed pursuant to 28 U. S.C. 2254, has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636 (b)(1)(B) and Local Magistrates' Rules MJR 3 and MJR 4.

Petitioner filed a proposed petition. Petitioner applies to proceed *in forma pauperis*. His documents show an average income of between \$40.00 and \$46.00 dollars per month (Dkt. # 3). Further, the end of the month statement shows a spendable balance of \$7.78 (Dkt. # 3). Petitioner can afford the \$5.00 filing fee in this case. The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigence. *See* 28 U.S.C. § 1915(a). However, the court has broad discretion in denying an application to proceed in forma

1 pauperis. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963), *cert. denied*, 375 U.S. 845 (1963).

2 Petitioner has the funds needed for full payment.

3 Plaintiff has not shown that is unable to pay the full filing fee to proceed with his petition.
4 Accordingly the court recommends the *in forma pauperis* status be **DENIED and petitioner be**
5 **given thirty days to pay the filing fee.** Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the
6 Federal rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to
7 file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver
8 of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating
9 the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on
10 **April 17, 2009**, as noted in the caption.

11 DATED this 16 day of May, 2009.
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14 */s/ J. Kelley Arnold*
15 J. Kelley Arnold
16 United States Magistrate Judge
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